27 February 2004

Original: English

Ad Hoc Committee on Jurisdictional Immunities of States and Their Property
1-5 March 2004

Draft articles on jurisdictional immunities of States and their property

Suggestions of the Chairman

Preamble

The States Parties to the present Convention,

Considering that the jurisdictional immunity of States is generally accepted as a principle of customary international law,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of the universal respect for, and observance of, human rights and fundamental freedoms for all,

Believing that an international convention on the jurisdictional immunities of States and their property would enhance the rule of law and legal certainty, particularly in dealings of States with private persons,

Taking into account the developments in State practice with regard to the jurisdictional immunities of States and their property,

Affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

[*Recognizing* the general understanding that the provisions of the present Convention do not cover criminal proceedings,]

Have agreed as follows:

04-25329 (E)

Final clauses

Article A
Annex

...

Article B
Other international agreements

Nothing in the present Convention shall affect existing or future international agreements in special fields or of a regional or subregional nature which relate to matters dealt with in the present Convention.

Article C
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of the present Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within six months shall, at the request of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature or ratification, acceptance or approval of, or accession to, the present Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party which has made such a declaration.

4. Any State Party that has made a declaration in accordance with paragraph 3 of this article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

Article D
Signature

The present Convention shall be open for signature by all States until [ ], at the United Nations Headquarters, New York.

Article E
Ratification, acceptance, approval or accession

The present Convention is subject to ratification, acceptance, approval or accession. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

Article F
Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the [thirtieth] instrument of ratification, acceptance or approval or accession with the Secretary-General of the United Nations. The Convention shall apply only to proceedings introduced after its entry into force.

2. For each State ratifying, accepting or approving, or acceding to, the present Convention after the deposit of the [thirtieth] instrument of ratification, acceptance or approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance or approval or accession. In such a case, the Convention shall apply only to proceedings introduced after it has entered into force with respect to that State.

Article G
Denunciation

1. Any State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The present Convention shall, however, continue to apply to proceedings introduced before the date on which the denunciation takes effect, and to judgements given in such proceedings.

Article H
Depositary and notifications

1. The Secretary-General of the United Nations is designated the depositary of this Convention.

2. As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States which have signed this Convention or acceded to it of the following:

(a) Signatures of the present Convention and of the deposit of instruments of ratification, acceptance, approval or accession or notifications of denunciation, in accordance with articles E and H;

(b) The date on which the present Convention will enter into force, in accordance with article F;

(c) Any acts, notifications or communications relating to the present Convention.

Article I
Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention are equally authentic.